IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10423 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAKULABEN JAYANTILAL PUJARA

Versus

STATE OF GUJARAT

Appearance:

MRS NISHA M PARIKH for Petitioner Nos. 1-2

Mr.Dagli, Assistant Government Pleader,

for Respondent No. 1-3

MR TUSHAR MEHTA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/07/2003

ORAL JUDGEMENT

Husband of petitioner No.1 and father of petitioner No.2, one Jayantilal Pujara, was a Government

servant. He was serving in the Roads and Buildings Department. Unfortunately, he died on 16.12.2000 and his death certificate is annexed along with the petition at Annexure 'B'. So far as respondent No.4, Mrs. Savitaben B. Pujara, is concerned, she is the mother of the said Jayantilal Pujara. It seems that the petitioner No.1 and her deceased husband were not keeping good relations and there were some matrimonial disputes.

After the death of the said Jayantilal Pujara, petitioner No.1 herein applied to the authorities to give her family pension. Petitioner No.1 also made some applications before the Executive Engineer, requesting him to give all the retiral benefits on the ground that she is entitled to get all these benefits as per the provisions of law and she accordingly requested them that the amount of gratuity, pension, provident fund etc., should be given to her.

In the meanwhile, respondent No.4 herein initiated proceedings for a declaration to the effect that her son has executed a Will in her favour and that the deceased has bequeathed some of his properties to her as well as to her daughter by virtue of executing the said Will. The grievance of the petitioners is that the Department is not giving them pensionary and other benefits, which, according to them, they are entitled to. Ultimately, the petitioners have filed this petition for necessary direction against the Department.

During the course of hearing, petitioners 1 and 2 as well as respondent No.4 were present before this court when the matter was lastly heard by this Court and during the course of the hearing, learned Advocates appearing for the respective parties, i.e., for petitioners 1 and 2, and for respondent No.4, tried to negotiate this matter.

Initially, the matter was kept on 3rd May, 2003, and, in fact, the consent terms were signed on 3rd May, 2003. However, on that day, the Court was not available and the matter was adjourned to 9th May, 2003.

On 9th May, 2003, consent terms were placed on record. Learned Advocate for respondent No.4, on that day, pointed out to the Court that the matter is amicably settled between the parties. Even during previous hearings, the respective parties were also present before the Court and had shown willingness to settle the matter, on the basis of which the consent terms were drafted and placed on record. Ultimately, on 9th May, 2003, the

consent terms were taken on record. However, since the Advocate of the petitioner was not present, the matter was subsequently adjourned.

Today, at the time when the matter is called out, learned Advocate for the petitioners as well as the learned Advocate for respondent No.4 have stated that the parties are willing to abide by the said consent terms, which are also produced on record. As per the consent terms, respondent No.4 has agreed that the amount of family pension, which is required to be paid, may be paid to the petitioners, and she has no objection if any direction is given to the Department to pay the pensionary benefits to the present petitioners. In the consent terms, it is also stated that monthly family pension may be paid to the petitioner No.1, for which the respondent No.4 has no objection. In paragraph 4 of the consent terms, it is specifically mentioned that except the amount mentioned in the earlier paragraph, rest of the amounts, such as gratuity, GPF, Insurance, leave salary, etc., is to be given to respondent No.4 and for which the petitioners have no objection if the said amount is given to respondent No.4. In paragraph 5 of the consent terms, it is stated that the civil suit filed by respondent No.4, being Civil Suit No.1228 of 2002, will be withdrawn, which is in connection with the declaration of her right on the basis of the Will in question.

The consent terms are now taken on record and the parties to abide by the said consent terms.

In view of the consent terms, respondents 1 to 3 are directed to disburse the amount of family pension, with arrears, if any, to the present petitioners, by issuing cheque in favour of petitioner No.1. Whatever benefit, which is required to be given to respondent No.4, as per the consent terms, be paid to respondent No.4 by way of appropriate crossed cheque in her favour. Respondents 1 to 3 are directed to calculate the amount accordingly, and pay to the respective parties in terms of the consent terms which are placed on record.

Advocates for both the sides have stated before the Court that the consent terms are signed voluntarily by the parties on their own free will and without any duress in any manner. It is stated that in order to find out just solution, they have agreed to settle the matter amicably. As stated earlier, during the last time, the parties were also present and they have shown their

willingness to settle the matter, but today, since the Advocates for the parties are present, their say is also taken into consideration.

In view of the aforesaid consent terms, the aforesaid direction is given to the State Government to disburse the amount accordingly, as indicated above. The amount which is required to be paid to the petitioners as well as to respondent No.4, as per the consent terms, may be paid to them at the earliest, and latest by 5th August, 2003.

Copy of the consent terms is placed on record. Learned AGP may be handed over a copy of the consent terms so that, in turn, he can hand over a copy of the consent terms to the Department who can act according to the consent terms.

In view of this order, Ms. Parikh, learned Advocate for the petitioners, wants to withdraw this petition. Permission is granted. Accordingly, petition stands disposed of as withdrawn. Rule is discharged. No costs.

Liberty to apply in case of difficulty.

Petitioners as well as respondent No.4 are permitted to take a certified copy of this order immediately for the purpose of showing the order to the Department for the purpose of expeditious disbursement of pension, etc.

3rd July, 2003 (P.B. Majmudar, J.)

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(apj)